

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
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Cause No: 05 – 10125 RCL

2005 MAR 16 P 12:55

Margaret Cimini,)
) A petition for the amendment to the
) removal from the Probate and Family
Plaintiff (Respondent below),) Court of Middlesex County, Massachusetts
)
)
)
v.)
)
Mark Cimini,) State court cause no.: 97D-4115-DV1
)
Defendant (Petitioner below),)
)
and, in re: the support and welfare)
of Jonathan Cimini.) Honorable Judge

Petition to Amend

Comes now the Defendant, Mark Cimini, to amend the pleading in direct support of the above-captioned court cause, initially filed January 20, 2005, brought under the various jurisdiction of this United States District Court provided under at least 28 USC § 1331, 28 USC § 1367, 28 USC 1441(b), 28 USC § 1441(c), 28 USC § 1441(e), 28 USC § 1443(1), 28 USC § 1443(2), and/or 28 USC § 1446, and Rules 8, 15, and 18 of the Federal Rules of Civil Procedure and on the federal questions involved, herein amends, alleges, states, and provides the following

ALLEGATIONS

- 1) That the 'Best Interest Policy' violates the Eighth Amendment to the US Constitution by depriving one parent, predominately male, of the care and companionship of his posterity, i.e., children, without any finding of unfitness, abuse, or neglect; also, the 'Best Interest Doctrine' creates a situation where the states 'owns' all minors within the Commonwealth.
- 2) Under Common Law, the state could only intrude on the parental property interests with respect to children after a finding of unfitness, abuse, or neglect.
- 3) Punishment lacking wrongdoing clearly violates the prohibition against "cruel and unusual" punishment defined in the Eighth Amendment to the US Constitution. Common Law, as

discussed in the initial pleadings, only allows for the punishment of the guilty following a conviction of some wrongdoing and more importantly strives to protect the innocent. Hence punishment of the innocent violates the Common Law as well.

- 4) Punishment constitutes any infringements and/or deprivation of any benefits, rights, privileges, or immunities.
- 5) The state does not have the right, either under the Constitution or Common Law, to punish a US person (*hereinafter* person) unless that person has been convicted of wrongdoing in a court of law of breaking a law or breaking a contract.
- 6) A theocracy is allowed to punish to maintain an ideology, but the Common Law dictates: *Nulla poena sine crimen* - No punishment except for a crime, and *Nulla poena sine leges* - No punishment outside the law. The roots of law is vengeance; transferring personal vengeance to the body politic for the protections of this right is a basic concept of law in this Republic as discussed in the Federalist Papers. Forcing those who have been wronged to accept the wrong and further punishing them is not law but ideology. Such behavior belongs in a theocracy, not in a Constitutional Republic.
- 7) Although the US Supreme Court has found that punishment of groups or classes of persons absent any wrongdoing¹ – to which divorced fathers clearly fit - violates the Eighth Amendment, the broader question for this court is, “Does the state *ever* have the right to punish the innocent and what slippery slope does that create?” Taking of children – i.e., Common Law property -, assignment of wages, and any subsequent punishments, e.g., license suspension or jail, are all punishments without any *underlying wrongdoing*.
- 8) Common Law, the only organic and foundational laws that defined marriage and family rights, includes a default condition of paternal preference in the case of divorce; notably, paternal possessing of superior title was not mandatory, only the default condition. Given the unlimited right to contract of US citizens, anyone entering into a marriage contract had a right, a perfect and inalienable right, to alter those default contractual terms. Specifically, a couple could specify equal title, maternal superior title, or even third party preference in the event of divorce. Fundamentally, the state does not have the right to redefine the marriage

¹ Robinson v. California, 370 U.S. 660, (1962)

contract without applying strict scrutiny in the case where there are Constitutionally protected rights.

- 9) The state, initiated solely by the judiciary, without showing any compelling need or legislative mandate to intrude on a Common Law property right and on the federally protected 'Obligation of Contracts', began redefining title to children under the 'Tender Years' doctrine during the termination phase of the contract.
- 10) A question for this court is by what authority or provision can the state redefine the Common Law default condition and if so, what Constitutional and Common Law limits are placed on this redefinition?
- 11) Common Law also provided that unmarried women had superior title to her children. This right remains largely intact to this day since the state only interferes with an unmarried (and now divorced) woman's 'custody' under EXTREME conditions of unfitness, abuse, or neglect.
- 12) The term custody is a complete fiction by the state. There is no foundational or organic definition of custody in Common Law.
- 13) Since Common Law defines children as Common Law property, the 'Best Interest Doctrine' effectively mandates that every child is the property of the state, a proto-Soviet concept.
- 14) In law, property rights are not the simple or vulgar concept of possession. Rights of property - in the nineteenth century referred to as a 'faggot of sticks' and in the twentieth century referred to as a 'bundle of sticks' - is a complex set of rights dependent on the property type. For example, ownership of land has associated with it a different bundle of sticks than ownership of a patent right. But the common and most important 'stick' in all these bundles is the right of a person to exercise 'free will' over property².
- 15) Since the state can, without overcoming any parental rights issues, exercise it's free will over children, then the state, also a US person, '*owns*' *the children*. This violates every concept of a free and sovereign people, and their posterity, in a Constitutional Republic.
- 16) "You have rights antecedent to all earthly governments; rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe", noted John Adams. Nothing in the US Constitution suggests that our government is a grantor of

² "Ownership", Oxford Essays in Jurisprudence, A.M. Honore, 1961, 1967

our rights; rather, government is *supposed* to be the protector of our rights. The right or contract of marriage is not granted by the state but has certainly been redefined by the state for its own profit and ideological/religious purposes.

- 17) The recent case, Department of Revenue v. Ryan R., 62 Mass. App. Ct. 380; 816 N.E.2d 1020; 2004 Mass. App. clearly shows that the state requires the ex-husband and biological father to *each* pay child support. The case involves a married woman who had an affair which produced a child. Because of the 500 year old Common Law requirement that the husband is the Father of any children born during a marriage, the husband, upon divorce, had to pay child support even though all parties knew it was not his child. Once divorced, the Commonwealth then went after the biological father for support as well. This precedence not only makes the state and judiciary party to fraud but offers encouragement to married women seeking to end their marriage to first have an affair which produces a child before getting divorced and then collect two (tax free) child support checks. Also the state benefits by the increases its federal statistics for kickbacks by establishing 200% paternity in such bizarre cases. The concept of dual paternity establishment violates at least the Federal necessities requirement. Note that this is the last vestige of Common Law in Family Law and just happens to enrich the state at the same time.

NOTICE TO PARTIES

- 18) Defendant now and hereby provide his formal Notice of the above to all interested parties, of record.

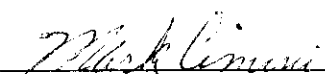
SUMMARY AND PRAYER

- 19) That this court find, including but not limited to, the Defendant's First, Fifth, Eighth, Ninth, the original Thirteenth, and Fourteenth Amendment of the US Constitution have been violated along with: the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, with Reservations, impermissible infringements on the Federally protected Obligation of Contracts, the unlawful interference with title to a child,

and Unconstitutional doctrine imposed by the state places children under the ownership of the state.

WHEREFORE, the undersigned Defendant, Mark Cimini, now pray for acceptance of this amendment into the record, and under, the jurisdiction of this United States District Court, with all speed, and for all other relief deemed just and proper in the premises.

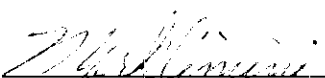
Respectfully submitted,


Mark Cimini

VERIFICATION

I hereby declare, verify, certify and state, pursuant to the penalties of perjury under the laws of the United States, and by the provisions of 28 USC § 1746, that all of the above and foregoing representations are true and correct to the best of my knowledge, information, and belief.

Executed at Westford, MA, this 16 day of March, 2005.


Mark Cimini

CERTIFICATE OF SERVICE

I hereby certify that, on this 16 day of March, 2005, a true and complete copy of the foregoing petition for removal, by depositing the same in the United States mail, postage prepaid, has been duly served upon all parties of record in the lower state proceedings, to-wit:

Margaret Cimini
5 Sand Beach Road
Westford, MA 01886

and, that the same is being also filed this same date within the lower state trial court proceedings.


Mark Cimini

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